

UNITED STATES FEDERAL DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

Joseph P. Carson, P.E.
10953 Twin Harbour Drive
Knoxville, TN 37934
865-300-5831

V

3:11-cv-399

U.S. Merit Systems Protection Board (MSPB)
1615 M St, NW
Washington, DC 20419

FOIA SUIT, PER 5 USC section 552(a)(4)(B)

Comes the petitioner, who is pro se in this action and respectfully says as follows:¹

Per 5 USC section 552(a)(4)(B), plaintiff files an FOIA suit seeking relief from defendant's failure to comply, in a good-faith way, with its nondiscretionary statutory obligations to respond to petitioner's request per time limits of 5 USC section 552(a)(6) and its own regulations at 5 CFR section 1204.11.

Petitioner, by law, is entitled to make FOIA requests of the Merit Systems Protection Board (MSPB) and MSPB, by law, has specific obligations to respond within specific time periods.

¹ This case is related to plaintiff's other cases at this Court, past or present.

THIS COURT'S JURISDICTION OVER THIS COMPLAINT

1. 5 USC 552(a)(4)(B) makes clear this Court has jurisdiction over this claim.

RELIEF SOUGHT

2. On May 28, 2011, plaintiff submitted a FOIA request to U.S. Merit Systems Protection Board (MSPB), which it numbered CB11-278 (exhibit 1). On July 30, 2011, plaintiff emailed a request for an update on MSPB's processing. On August 1, MSPB responded by requesting 10 additional workdays. On August 3, MSPB emailed a request for further clarification. On August 3, plaintiff responded by email, requesting an opportunity to talk to clarify the request (exhibit 2 contains this email thread). Since then, plaintiff has left several voicemails and sent several emails with MSPB, but MSPB has not responded. On August 17, after leaving another voicemail, plaintiff sent an email informing MSPB of his intent to file a FOIA suit if MSPB did not contact him to clarify his FOIA request by COB August 19 (exhibit 3). MSPB did not contact plaintiff, so he is filing a FOIA suit.
3. More than 30 workdays have passed since MSPB received his FOIA request. MSPB apparently claims that plaintiff has not made a reasonable description for the records sought, but it will not respond to his several voicemails and emails to clarify the records he seeks. If MSPB is going to

claim that plaintiff's request does not provide a reasonable description of the documents requested, then MSPB has to be willing to speak to the plaintiff about it, not just send a vague and arbitrary email.

4. Plaintiff is filing this complaint to catalyze MSPB's compliance with its nondiscretionary duties to either: 1) respond to his initial FOIA request or a jointly agreed upon modified request within the statutory time frame, or 2) establish an alternative time frame to respond to his initial or modified FOIA request.
5. Had MSPB made a good faith effort to comply with its statutory duties to plaintiff, most specifically by responding to any of his several voice mail messages or email, then he would not be filing this FOIA suit. Therefore, he believes he should recoup his litigation costs, per the current law.
6. Plaintiff seeks to demonstrate via this FOIA request that the MSPB, particularly the licensed attorneys who have served in the Presidential nominated, Senate confirmed positions within it since 1979, have violated their oaths as attorneys and federal employees by not ensuring MSPB complied with all its nondiscretionary statutory duties for determining whether applicants to and members of the federal civil service are adequately protected from reprisal and other types of prohibited personnel

practices (PPPs).

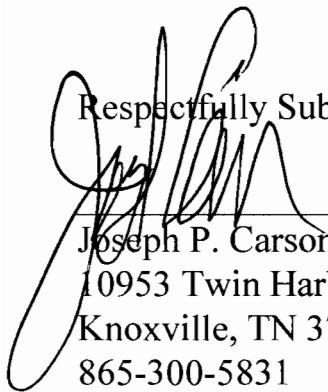
7. Apparently these attorneys believe(d) MSPB is their client, whose interests they must hold paramount, including doing whatever they can to deny or cover-up evidence of its lawbreaking failure to do so, regardless of the harm to MSPB's mission and the federal civil service.
8. More specifically, the plaintiff contends MSPB has done nothing in 33 years to regulate, via its special studies function, the U.S. Office of Special Counsel (OSC). OSC is the two primary regulator of the federal civil service, responsible to ensure federal employees are adequately protected agency violations of the merit system principles - the bedrock values of the federal civil service. Such violations are termed prohibited personnel practices (PPPs) and include reprisal.
9. OSC - which is a federal law enforcement agency - is the most essential regulator of all the federal agencies - its regulation of the federal civil service is essential to ensuring members of the federal civil service are adequately protected from reprisal and other types of PPPs, so they can perform their duties - particularly in regulating other aspects of American society - in a trustworthy fashion, per the merit system principles.
10. MSPB is OSC's regulator (among several other functions). If OSC is

overzealous in its discretionary duties as a prosecutor, MSPB regulates it via its adjudicatory function. MSPB has performed this function. But MSPB also has a regulatory role over OSC's interpretation of and compliance with its nondiscretionary duties as an investigatory agency, via MSPB's special studies function. This duty MSPB unlawfully renounced or abandoned 33 years ago.

11. The purpose of this FOIA request is to expose this MSPB lawbreaking, so it can be corrected and the direct victims of it - the likely tens of thousands of loyal, patriotic federal employees, who were so foolhardy to put compliance with the merit system principles and public duty before their economic self-interest and who were betrayed by OSC's lawbreaking failure to protect them as required by law since 1979 - might get some justice, however limited or delayed.
12. This FOIA request is also intended to obtain information so that the licensing boards of the involved MSPB attorneys can evaluate taking disciplinary action against them, for their failure to "blow whistles" as necessary to ensure MSPB complied with its nondiscretionary statutory duties regarding the protection of federal employees from PPPs.
13. America is much diminished and more threatened by 33 years of OSC

lawbreaking, enabled by 33 years of MSPB lawbreaking, enabled by
licensed attorneys employed at MSPB violating their oaths as attorneys and
federal employees by covering-up MSPB's lawbreaking and refusing to
consider evidence of OSC's lawbreaking within MSPB's special studies
jurisdiction.

Respectfully Submitted,



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APR 20, 2011

LIST OF EXHIBITS, Carson v. Office of Special Counsel (MSPB)

1. FOIA request dated May 28, 2011
2. Email thread of July 30 to August 3, 2011 about status of FOIA request
3. Plaintiff's email to MSPB of August 17, 2011